

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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JONATHAN MULLANE,

Plaintiff,

v.

DOCKET NO.: No. 18-12618-PBS

THE UNITED STATES OF AMERICA,  
FEDERICO A. MORENO, in his personal capacity,  
ALISON W. LEHR, in her personal capacity,  
BREAKING MEDIA, INC., and  
ELIE MYSTAL, in his individual and  
corporate capacities;

Defendants.

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**DEFENDANTS BREAKING MEDIA, INC. AND ELIE MYSTAL'S  
MOTION TO DISMISS PLAINTIFF JONATHAN MULLANE'S  
VERIFIED SECOND AMENDED COMPLAINT**

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Defendants Breaking Media, Inc. and Elie Mystral ("Defendants") hereby move to dismiss all claims brought against them by Plaintiff Jonathan Mullane pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(2) in his most recently filed pleading entitled, "Verified Second Amended Complaint" which was filed on March 15, 2019 [ECF No. 57]. Although this Court issued an Order dated March 13, 2019 [ECF No. 56] explicitly stating that their previously filed Motion to Dismiss Mullane's Verified First Amended Complaint [ECF No. 21] "shall be deemed to relate to the Second Amended Complaint, and the hearing on the motion shall go forward as scheduled on March 28, 2019<sup>1</sup>," the Defendants, out an abundance of caution with respect to a *pro se* plaintiff who has demonstrated a penchant for attempting to default parties in other litigation, file this Motion to Dismiss so it is clear

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<sup>1</sup> The hearing was rescheduled and heard instead on March 29, 2019.

on the docket that Defendants have formally moved to dismiss the Verified Second Amended Complaint.

Defendant Breaking Media, Inc. and Elie Mystral hereby incorporate their arguments set forth in their previously filed Motion to Dismiss [ECF No. 21], their Memorandum in Support thereof [ECF No. 22] on January 9, 2019, as well as their oral arguments at the hearing held on March 29, 2019.

Wherefore, the Defendants request that this Court grant their Motion to Dismiss all claims asserted against them Verified Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and/or 12(b)(2).

Breaking Media, Inc. and Elie Mystral  
By their attorneys,

/s/ J. Mark Dickison

Dated: April 3, 2019

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#### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be served upon non-registered participants.

/s/ J. Mark Dickison